

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 27TH DAY OF FEBRUARY 2015/8TH PHALGUNA, 1936

WP(C).No. 5211 of 2015 (B)

PETITIONER:

HORIZON PARKS APARTMENTS OWNERS ASSOCIATION,
HORIZON PARKS APRTMENTS, VELLAYAMBALAM
THIRUVANANTHAPURAM REP. BY ITS SECRETARY
SRI.C.M.HARSHAN.

BY ADVS.SRI.BECHU KURIAN THOMAS
SRI.ENOCH DAVID SIMON JOEL

RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY,
DEPARTMENT OF WATER RESOURCES,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM 695 001.
2. ASSISTANT EXECUTIVE ENGINEER,
SEWWERGE SUB DIVISION (NORTH),
KEALA WATER AUTHORITY,
PATTOOR, THIRUVANANTHAURAM 695 024.
3. CORPORATION OF THIRUVANANTHAPURAM,
VIKAS BHAVAN PO, THIRUVANANTHAPURAM 695 033
REPRESENTED BY ITS SECRETARY.

R1 BY GOVT. PLEADER SRI.G.GOPAKUMAR
R3 BY ADV. SRI.P.K.MANOJKUMAR
R2 BY ADV. SRI.JOSEPH JOHN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
27-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 5211 of 2015 (B)

PETITIONER'S EXHIBITS:

EXHIBIT P1 TRUE COPY OF THE APPROVED PLAN FOR CONNECTING THE DRAIN TO THE CSM NAGAR ROAD

EXHIBIT P2 COPY OF THE LETTER DATED 26/8/2014 AND NUMBERED AS IDA A-4/2014 ISSUED BY THE 2ND RESPONDENT TO THE 3RD RESPONDENT

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.5211 of 2015 B

Dated this the 27th day of February, 2015

JUDGMENT

The petitioner, an association of apartment owners, initially applied to the second respondent for laying sewerage pipeline across the public road owned by the third respondent Corporation and obtained necessary permission, as could be seen from Exhibit P1 rough sketch. In fact, the second respondent, through Exhibit P2, requested the third respondent to accept the necessary charges from the petitioner for permitting it to lay the sewerage connection across the public road.

2. Complaining that the third respondent has been insisting on obtaining prior consent of the Councillor of the ward concerned before processing the petitioner's request for permission, it has filed the present writ petition.

3. On 19.02.2015, in view of the urgency expressed by the learned counsel for the petitioner that the third respondent is going to tar the road within a day or two and that it would be very difficult for the petitioner to break the tarred road and lay the pipeline, which essentially involves expenditure and hardship, this Court issued orders of status quo. At any rate, later the learned Standing Counsel for the third respondent has made a mention before the Court to modify the interim order to the effect that the third respondent can proceed with the tarring of the road, leaving a portion of the road to enable the petitioner to lay the sewerage pipe, after obtaining the necessary permission in that regard from the third respondent.

4. Acceding to the request of the learned Standing Counsel, on 26.02.2015, yesterday, this Court dictated an order modifying the interim order granted on 20.02.2015. In the evening before the order could be signed, the learned counsel for the petitioner made a mention in the chambers

that the writ petition could be disposed of with suitable directions instead of modifying the interim order. Accordingly, the matter is listed today under the caption 'to be spoken to'.

5. The learned counsel for the petitioner has urged this Court that if the third respondent is allowed to tar the road leaving a portion thereof, even after the petitioner's laying the pipeline, it would never tar that portion of the road. He has also submitted that the respondent Corporation could first clear the petitioner's request and wait for a couple of days when the petitioner could complete the process of laying the sewerage pipe and thereafter tar the entire road, instead of having a piecemeal approach in that regard.

6. The learned Standing Counsel, on his part, has submitted that so far the petitioner has not made any application to the respondent Corporation seeking its permission to lay the sewerage pipe. Drawing my attention

to Exhibit P2 issued by the second respondent, the learned Standing Counsel would contend that it is only a recommendation by an authority, and in addition to the said recommendation, it is essential for the petitioner to make a proper application which is required to be considered by the respondent Corporation.

7. The learned Standing Counsel has further contended that it is an established practice in the respondent Corporation that any person who wishes to lay pipe line across the road owned by the Corporation is required to get the consent of the Councillor of the ward concerned. When this Court put a specific query whether there is any statutory backing to such practice, the learned Standing Counsel, to his credit, has submitted that it is an established practice, though without statutory backing. I cannot countenance the said submission that the petitioner is required to get the permission of the Councillor, unless the statute mandates to the said effect. Suffice it to observe

that the petitioner's application has to be considered by the respondent Corporation in accordance with law, keeping in view Exhibit P2 recommendation made by the second respondent.

8. In the facts and circumstances, the petitioner is directed to file necessary application before the third respondent seeking its permission to lay the sewerage pipe in terms of the permission granted by the second respondent, as could be seen from Exhibit P1; once such an application is filed, the third respondent shall consider it in accordance with law and pass appropriate orders thereon within two weeks from the date of receipt of the application. In the meanwhile, the third respondent is at liberty to proceed with its work of tarring the Althara Road B Street and CSM Nagar Road leaving a width of one metre, so that once the petitioner's application is processed and necessary permission is granted, the sewerage pipe could be laid without causing damage to the road.

9. It is further made clear that, if there is any delay on the part of the petitioner in making the application within one week from today, the request of the petitioner stands rejected. In the light of the apprehension expressed by the learned counsel for the petitioner that once laying of the sewerage pipe is over, the portion left untarred would not be taken up by the respondent Corporation for tarring, I do not have any reason to doubt the efficacy of the administration to ensure that the roads are proper. I am of the opinion that the apprehension of the learned counsel for the petitioner is unfounded.

With the above observation and directions, the writ petition stands disposed of. No order as to costs.

Dama Seshadri Naidu, Judge

tkv